



**SO ORDERED.**

**SIGNED this 19 day of June, 2007.**

  
J. Rich Leonard  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

KIMBERLY MCKILLOP,  
ROLAND MOORING, RHONDA MOORING,  
FRANKIE MORRISON,  
CHERYL MOTT,  
BERNADETTE MURRILL,  
JOHN PETERSON, PEARL PETERSON,  
CLYDE RICH, WILMA RICH,  
RHONDA RICH,  
JAMES RYAN, SUSAN RYAN,  
ELMER SAWYER, JR.,  
FAAFETAI SEIULI, MALELE SEIULI,  
TAMMY SMALLWOOD,  
TINA ANN SMITH,  
FAITH SOUZA,  
ARTHUR STEWART, LINDA STEWART,  
JAMES STRICKLAND,  
TERRY THACKER, ANNIE THACKER,  
DOLPHUS THOMPSON, SR., JACQUELINE  
THOMPSON,  
KENNETH WALLER, DEBRA WALLER,  
FAYE WATKINS,  
FLEMING WIGGINS, LYDIA WIGGINS,

Case No. 04-00153-8-JRL  
Case No. 03-04580-8-JRL  
Case No. 02-10839-8-JRL  
Case No. 05-10599-8-JRL  
Case No. 04-00912-8-JRL  
Case No. 04-02356-8-JRL  
Case No. 02-05649-8-JRL  
Case No. 05-00444-8-JRL  
Case No. 03-07780-8-JRL  
Case No. 05-01891-8-JRL  
Case No. 06-00046-8-JRL  
Case No. 04-00857-8-JRL  
Case No. 04-00549-8-JRL  
Case No. 04-06531-8-JRL  
Case No. 03-09628-8-JRL  
Case No. 04-05868-8-JRL  
Case No. 03-10902-8-JRL  
Case No. 03-05592-8-JRL  
  
Case No. 04-02051-8-JRL  
Case No. 03-07062-8-JRL  
Case No. 04-07669-8-JRL

Debtors.

Chapter 13

ORDER

This case is before the court on the applications for additional attorney's fees filed by Peter K. Gemborys. On June 13, 2007, the court conducted a hearing on these matters in Wilmington, North Carolina.

In these cases, Mr. Gemborys is seeking non-base fees for services performed more than one year after the bankruptcy filing or for the fourth service provided within the first year of a bankruptcy case. The trustee objected to the fee applications, asserting that the length of time between the services rendered and the filing of the fee applications places an unreasonable burden on the debtors and the estates.

At the hearing, Mr. Gemborys testified that, as a result of his review of cases after his suspension from practice before this court in November 2006, he discovered that his office staff had not filed fee applications for services warranting non-base fees. Mr. Gemborys asserted that, until he independently reviewed the cases, he was unaware that the fee applications had not been filed for the services performed.

Mr. Gemborys noted that Local Rule 2016-1, addressing compensation of professionals, does not set forth a filing deadline for non-base fee applications. Despite the absence of a finite deadline in the local rule, equity imposes a duty to act in a reasonable manner. “[I]ndependently of any limitation prescribed for the guidance of courts of law, equity may, in the exercise of its own inherent powers, refuse relief where it is sought after undue and unexplained delay, and when injustice would be done, in the particular case, by granting the relief asked.” Wolf v. Citizens Bank & Trust Co. of Southern Pines, 92 F.2d 233, 236 (4<sup>th</sup> Cir. 1937). Some of the fee applications involve services provided years ago in cases that are closing. The reason for the delay is simply administrative oversight. The court has reviewed the non-base fee applications at issue. The court finds that, for cases where services were provided before January 1, 2006, the delay is unreasonable and unjustified requiring debtors who have anticipated the closing of their cases to extend the terms of their plan to accommodate fees for services that were rendered years ago. For those cases where services were provided January 1, 2006 or thereafter, the court will grant the non-base fee

applications.

Based on the foregoing, the court DENIES the following non-base fee applications:

| <b>Case</b>                                      | <b>Petition Filed</b> | <b>Service</b>   | <b>Date Service Provided</b>   | <b>Date Application Filed</b> | <b>Amount Sought</b> |
|--|-----------------------|--|--|-------------------------------|----------------------|
| Kenneth Waller<br>Debra Waller<br>04-02051-8-JRL | 3/12/04               | Representing debtors on motion to modify plan post-confirmation              | Motion filed 3/21/05. Order approving motion entered 4/15/05.                                  | 4/25/07                       | \$250                |
| Tina Smith<br>04-00549-8-JRL                     | 1/21/04               | Representing debtor on motion to modify plan post-confirmation               | Motion filed 3/31/05. Order approving motion entered 4/27/05.                                  | 4/25/07                       | \$250                |
| Kimberly McKillop<br>04-00153-8-JRL              | 1/7/04                | Representing debtor on trustee's motion to dismiss                           | Trustee's motion filed 3/31/05. Debtor's response filed 6/2/05. Consent order entered 7/13/05. | 4/25/07                       | \$200                |
| Terry Thacker<br>Annie Thacker<br>03-10902-8-JRL | 12/18/03              | Representing debtors on American General Finance's objection to confirmation | Objection filed 6/11/04 and heard 7/7/04. Order denying objection entered 7/14/04.             | 4/26/07                       | \$350                |

| <b>Case</b>                                       | <b>Petition Filed</b> | <b>Service</b>  | <b>Date Service Provided</b>   | <b>Date Application Filed</b> | <b>Amount Sought</b> |
|---|-----------------------|---|--|-------------------------------|----------------------|
| Arthur Stewart<br>Linda Stewart<br>03-09628-8-JRL | 11/5/03               | Representing debtors on trustee's second motion to dismiss                | Trustee's motion filed 7/27/04. Debtors' response filed 8/6/04. Consent order entered 10/14/04.                              | 4/30/07                       | \$200                |
| Clyde Rich<br>Wilma Rich<br>02-05649-8-JRL        | 7/8/02                | Representing debtors on Citicorp Trust Bank's motion for relief from stay | Citicorp Trust Bank's motion filed 9/7/04. Response filed 9/15/04. Consent order entered 10/25/04.                           | 4/25/07                       | \$350                |
| Clyde Rich<br>Wilma Rich<br>02-05649-8-JRL        | 7/8/02                | Representing debtors on trustee's second motion to dismiss                | Trustee's motion filed 7/16/03. Debtors' response filed 7/22/03. Trustee's motion withdrawn 9/25/03.                         | 4/25/07                       | \$200                |
| James Strickland<br>04-05868-8-JRL                | 7/28/04               | Representing debtor on trustee's second motion to dismiss                 | Trustee's motion filed 7/19/05. Debtor's response filed 7/27/05. Hearing held 9/21/05. Order denying motion entered 9/28/05. | 4/25/07                       | \$200                |

| <b>Case</b>   | <b>Petition Filed</b> | <b>Service</b>  | <b>Date Service Provided</b>   | <b>Date Application Filed</b> | <b>Amount Sought</b> |
|---|-----------------------|---|--|-------------------------------|----------------------|
| James Strickland<br>04-05868-8-JRL                              | 7/28/04               | Representing debtor on motion to set aside order lifting stay   | Debtor's motion filed 10/27/05. Consent order entered 12/14/05 vacating previous order.            | 4/25/07                       | \$250                |
| Tammy Smallwood<br>04-00857-8-JRL                               | 2/4/04                | Representing debtor on Green Tree's motion for relief from stay | Green Tree's motion filed 3/23/05. Debtor's response filed 3/28/05. Consent order entered 4/26/05. | 4/25/07                       | \$350                |
| James Ryan<br>Susan Ryan<br>03-07780-8-JRL                      | 9/8/03                | Representing debtors on trustee's motion to dismiss             | Trustee's motion filed 12/1/04. Debtors' response filed 12/3/04. Consent order entered 1/31/05.    | 4/25/07                       | \$200                |
| Faye Watkins<br>03-07062-8-JRL                                  | 8/12/03               | Representing debtor on trustee's motion to dismiss              | Trustee's motion filed 12/28/04. Consent order entered 3/2/05.                                     | 4/25/07                       | \$200                |
| Dolphus Thompson, Sr.,<br>Jacqueline Thompson<br>03-05592-8-JRL | 6/23/03               | Representing debtor on trustee's motion to dismiss              | Trustee's motion filed 10/28/05. Consent order entered 12/12/05.                                   | 4/25/07                       | \$200                |

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|---|-----------------------|--|---|-------------------------------|----------------------|
| Roland Mooring,<br>Rhonda Mooring<br>03-04580-8-JRL | 5/21/03               | Representing debtor on trustee's motion to dismiss                                   | Trustee's motion filed 10/27/04. Debtors' response filed 11/3/04. Consent order entered 1/5/05.           | 4/25/07                       | \$200                |
| Frankie Morrison<br>02-10839-8-JRL                  | 12/27/02              | Representing debtor on Ford Motor Company's objection to confirmation                | Objection to confirmation filed 7/29/03. Hearing held 9/11/03. Order resolving objection entered 9/22/03. | 4/30/07                       | \$350                |
| Frankie Morrison<br>02-10839-8-JRL                  | 12/27/02              | Representing debtor on trustee's second motion to dismiss                            | Trustee's second motion to dismiss filed 7/29/04. Debtor's response filed 8/6/04. Motion denied 11/20/04. | 4/30/07                       | \$200                |
| Bernadette Murrill<br>04-00912-8-JRL                | 2/4/04                | Representing debtor on motion to modify plan post-confirmation                       | Debtor's motion filed 7/21/05. Order granting motion entered 8/17/05.                                     | 4/25/07                       | \$250                |
| Fleming Wiggins,<br>Lydia Wiggins<br>04-07669-8-JRL | 10/4/04               | Representing debtors in lien avoidance action against Modern Finance (05-0006-8-AP). | Action filed 1/7/05. Default judgment entered against creditor on 2/16/05.                                | 4/25/07                       | \$500                |

| <b>Case</b>  | <b>Petition Filed</b> | <b>Service</b>  | <b>Date Service Provided</b>  | <b>Date Application Filed</b> | <b>Amount Sought</b> |
|--|-----------------------|---|---|-------------------------------|----------------------|
| John Peterson, Jr.<br>Pearl Peterson<br>04-02356-8-JRL | 3/23/04               | Representing debtors on motion to modify plan post-confirmation | Debtors' motion filed 3/31/05. Order granting motion entered 4/27/05. | 4/25/07                       | \$250                |

The court GRANTS the following non-base fee applications:

| <b>Case</b>  | <b>Petition Filed</b> | <b>Service</b>                                      | <b>Date Service Provided</b>  | <b>Date Application Filed</b> | <b>Amount Sought</b> |
|--|-----------------------|---|---|-------------------------------|----------------------|
| Faafetai Seiuli<br>Malele Seiuli<br>06-00046-8-JRL | 1/6/06                | Representing debtors on motion to extend stay       | Motion filed 1/23/06. Hearing held 1/31/06. Order approving motion entered 3/7/06.                                      | 4/25/07                       | \$350                |
| Rhonda Rich<br>05-00444-8-JRL                      | 1/18/05               | Representing debtors on trustee's motion to dismiss | Trustee's motion to dismiss filed 9/1/06. Matter removed from calendar prior to hearing. Consent order entered 11/6/06. | 4/25/07                       | \$200                |
| Faith Souza<br>04-06531-8-JRL                      | 8/20/04               | Representing debtor on trustee's motion to dismiss  | Trustee's motion filed 1/30/06. Hearing held 2/28/06. Order denying motion entered 3/17/06.                             | 4/30/07                       | \$200                |

| <b>Case</b>   | <b>Petition Filed</b> | <b>Service</b>  | <b>Date Service Provided</b>  | <b>Date Application Filed</b> | <b>Amount Sought</b> |
|---|-----------------------|---|---|-------------------------------|----------------------|
| Cheryl Mott<br>05-10599-8-JRL                       | 12/6/05               | Representing debtor on motion to extend stay  | Debtor's motion filed 12/8/05. Hearing held 1/3/06. Order granting motion entered 2/10/06.  | 4/26/07                       | \$350                |
| Elmer Sawyer, Jr.<br>05-01891-8-JRL                 | 3/9/05                | Representing debtor on motion to modify plan post-confirmation                                  | Debtor's motion filed 3/13/06. Order granting motion entered 4/7/06.  | 4/25/07                       | \$250                |
| James Ryan<br>Susan Ryan<br>03-07780-8-JRL          | 9/8/03                | Representing debtors on trustee's second motion to dismiss                                      | Trustee's motion filed 8/4/06. Debtors' response filed 8/22/06. Motion withdrawn 11/29/06.  | 4/25/07                       | \$200                |
| Fleming Wiggins,<br>Lydia Wiggins<br>04-07669-8-JRL | 10/4/04               | Representing debtors in lien avoidance action against Old Canal Financial Corp. (05-00082-8-AP) | Action filed 4/25/05 originally against Master Financial, which was later dismissed and served against Canal Financial Corp. Consent order entered 6/9/06 stripping Canal Financial Corp.'s lien. | 4/25/07                       | \$1,000              |

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